



Eden Environmental Citizen's Group, LLC

August 20, 2019

Via US Mail, Certified USPS Tracking No. 9407 1118 9956 1507 9149 37

Henry Rotor
Title: Safety Director
F.T.G. Construction Materials, Inc.
915 West Anderson Street
Stockton, CA 95206

Via US Mail

Anthony J. Alegre
Agent for service/CEO
F.T.G. Construction Materials, Inc
1630 Edgewood Drive
Lodi, CA 95240

Re: 60-Day Notice of Violations and Intent to File Suit Under the Federal Water Pollution Control Act ("Clean Water Act")

To Officers, Directors, Operators, Property Owners and/or Facility Managers of F.T.G. Construction Materials, Inc.:

This letter is being sent to you on behalf of Eden Environmental Citizen's Group, LLC ("EDEN") to give legal notice that EDEN intends to file a civil action against Anthony Alegre and F.T.G. Construction Materials, Inc. ("Discharger" or "F.T.G. Construction Materials, Inc.") for violations of the Federal Clean Water Act ("CWA" or "Act") 33 U.S.C. § 1251 *et seq.*, that EDEN believes are occurring at the F.T.G. Construction Materials facility located at 915 West Anderson Street in Stockton, California ("the Facility" or "the site").

EDEN is an environmental citizen's group established under the laws of the State of California to protect, enhance, and assist in the restoration of all rivers, creeks, streams, wetlands, vernal pools, and tributaries of California, for the benefit of its ecosystems and communities.

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EDEN formally registered as a limited liability company (LLC) association with the California Secretary of State on June 22, 2018; however, since at least July 1, 2014, EDEN has existed as an unincorporated environmental citizen's association with members who remain associated with EDEN as of the date of this Notice.

As discussed below, the Facility's discharges of pollutants degrade water quality and harm aquatic life in the Facility's Receiving Waters, which are waters of the United States and described in Section II.B, below. EDEN has members throughout California. Some of EDEN's members live, work, and/or recreate near the Receiving Waters and use and enjoy the Receiving Waters for surfing, kayaking, camping, fishing, boating, swimming, hiking, cycling, bird watching, picnicking, viewing wildlife, and/or engaging in scientific study.

At least one of EDEN's current members has standing to bring suit against F.T.G. Construction Materials, as the unlawful discharge of pollutants from the Facility as alleged herein has had an adverse effect particular to him or her and has resulted in actual harm to the specific EDEN member(s).

Further, the Facility's discharges of polluted storm water and non-storm water are ongoing and continuous. As a result, the interests of certain individual EDEN members have been, are being, and will continue to be adversely affected by the failure of F.T.G. Construction Materials to comply with the General Permit and the Clean Water Act.

CWA section 505(b) requires that sixty (60) days prior to the initiation of a civil action under CWA section 505(a), a citizen must give notice of intent to file suit. 33 U.S.C. § 1365(b). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency ("EPA"), and the State in which the violations occur.

As required by CWA section 505(b), this Notice of Violation and Intent to File Suit provides notice to the Discharger of the violations which have occurred and continue to occur at the Facility. After the expiration of sixty (60) days from the date of this Notice of Violation and Intent to File Suit, EDEN intends to file suit in federal court against the Discharger under CWA section 505(a) for the violations described more fully below.

I. THE SPECIFIC STANDARD, LIMITATION, OR ORDER VIOLATED

EDEN's investigation of the Facility has uncovered significant, ongoing, and continuous violations of the CWA and the General Industrial Storm Water Permit issued by the State of California (NPDES General Permit No. CAS000001 [State Water Resources Control Board ("SWRCB")] Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ ("1997 Permit") and by Order No. 2014-0057-DWQ ("2015 Permit") (collectively, the "General Permit").

Information available to EDEN, including documents obtained from California EPA's online Storm Water Multiple Application and Reporting Tracking System ("SMARTS"), indicates that on or around October 31, 1995, F.T.G. Construction Materials submitted a Notice of Intent ("NOI") to be authorized to discharge storm water from the Facility. On or around April 28, 2015, F.T.G. Construction Materials submitted an NOI to be authorized to discharge storm water from the Facility under the 2015 Permit. F.T.G. Construction Materials' assigned Waste Discharger Identification number ("WDID") is 5S39I011916.

As more fully described in Section III, below, EDEN alleges that in its operations of the Facility, F.T.G. Construction Materials has committed ongoing violations of the substantive and procedural requirements of the Federal Clean Water Act, California Water Code §13377; the General Permit, the Regional Water Board Basin Plan, the California Toxics Rule (CTR) 40 C.F.R. § 131.38, and California Code of Regulations, Title 22, § 64431.

II. THE LOCATION OF THE ALLEGED VIOLATIONS

A. The Facility

The location of the point sources from which the pollutants identified in this Notice are discharged in violation of the CWA is F.T.G. Construction Materials' permanent facility address of 915 West Anderson Street in Stockton, California.

F.T.G. Construction Materials Facility is an establishment engaged in the wholesale distribution of stone, cement, lime, construction sand and gravel, brick (except refractory), asphalt and concrete mixtures, concrete, and structural clay products (other than refractories). Facility operations of these activities are classified under SIC-5032.

The Facility is also engaged in manufacturing concrete building block and brick of cement and aggregate. Facility operations are covered under Standard Industrial Classification Code (SIC) 3271- Concrete block and brick.

In addition, the Facility is engaged in the delivery of construction materials via motor transportation. Facility operations of these activities are classified under (SIC) 4212-Local Trucking without Storage.

Based on the EPA's Industrial Storm Water Fact Sheet for Sector E - Glass, Clay, Cement, Concrete, and Gypsum Product Manufacturing Facilities, polluted discharges from operations at the Facility contain pH affecting substances; metals, such as iron and aluminum; toxic metals, such as lead, zinc, cadmium, chromium, and arsenic; chemical oxygen demand ("COD"); biochemical oxygen demand ("BOD"); total suspended solids ("TSS"); benzene; gasoline and diesel fuels; fuel additives; coolants; and oil and grease ("O&G"). Many of these pollutants are on the list of chemicals published by the State of California as known to cause cancer, birth defects, and/or developmental or reproductive harm.

Information available to EDEN indicates that the Facility's industrial activities and associated materials are exposed to storm water, and that each of the substances listed on the EPA's Industrial Storm Water Fact Sheet is a potential source of pollutants at the Facility.

B. The Affected Receiving Waters

The Facility discharges into a municipal storm drain system, which then discharges to the French Camp Slough, a tributary of the San Joaquin River ("Receiving Waters").

The San Joaquin River is a water of the United States. The CWA requires that water bodies such as San Joaquin River meet water quality objectives that protect specific "beneficial uses." The Central Valley Regional Water Board has issued its *Water Quality Control Plan for the Sacramento and San Joaquin River Basins* ("Basin Plan") to delineate those water quality objectives.

The Basin Plan identifies the "Beneficial Uses" of water bodies in the region. The Beneficial Uses for the Receiving Waters downstream of the Facility include: Municipal and Domestic Supply (MUN), Agricultural Supply (AGR), Industrial Process Supply (PRO), Industrial Service Supply (IND), Navigation (NAV), Water Contact Recreation (REC-1), Non-contact Water Recreation (REC-2), Warm Freshwater Habitat (WARM), Cold Freshwater Habitat (COLD), Wildlife Habitat (WILD), Migration (MIGR), and Spawning, Reproduction, and/or Early Development (SPWN).

A water body is impaired pursuant to section 303(d) of the Clean Water Act, 33 U.S.C. § 1313(d), when its Beneficial Uses are not being achieved due to the presence of one or more pollutants.

The San Joaquin River is impaired for Selenium, Salinity, Total Dissolved Solids (TDS), Electrical Conductivity (EC), Boron, Organophosphorus (OP) Pesticides (Diazinon, Chlorpyrifos), Oxygen-Demanding Substances (BOD/Algae, Ammonia, Organic N), Organochlorine "Legacy" Pesticides (DDT, Chlordane, Dieldrin, Toxaphene, etc.), Mercury, Pathogen-Indicator Organisms, E. coli, Fecal Coliforms, and Toxicity of Unknown Cause.

Polluted storm water and non-storm water discharges from industrial facilities, such as the Facility, contribute to the further degradation of already impaired surface waters, and harm aquatic dependent wildlife.

III. VIOLATIONS OF THE CLEAN WATER ACT AND GENERAL PERMIT

A. Deficient/Invalid SWPPP and Site Map

F.T.G. Construction Materials' current Storm Water Pollution Prevention Plan ("SWPPP") and Site Map for the Facility are both inadequate and fail to comply with the requirements of the General Permit as specified in Section X of Order No. 2014-0057-DWQ, as follows:

- (a) The Site Map does not include the minimum required components for Site Maps as indicated in Section X.E of the General Permit. Specifically, the Site Map fails to include the following:
 - 1) identification of all impervious areas of the facility, including paved areas, buildings, covered storage areas or other roofed structures;
 - 2) locations of storm water collection and conveyance systems associated with discharge locations and direction of flow;
 - 3) storm water sampling locations;
 - 4) locations and descriptions of structural control measures that affect industrial storm water discharges, authorized NSWDS and/or run-on, if any;
 - 5) identification of all impervious areas of the facility, including paved areas, buildings, covered storage areas or other roofed structures;
 - 6) locations where materials are directly exposed to precipitation and the locations where identified significant spills or leaks have occurred;
 - 7) all areas of industrial activity subject to the General Permit.
- (b) The SWPPP is invalid because it was **not certified and submitted by the Facility's Legally Responsible Person**. In fact, the SWPPP was not certified by anyone. Pursuant to Section XII.K of the General Permit, all Permit Registration Documents (PRDs), including SWPPPs, must be certified and submitted by the Facility's authorized Legally Responsible Person;
- (c) The SWPPP fails to include an appropriate discussion of all **Industrial Materials** handled at the facility, including the locations where the materials are stored, received, shipped and handled, and the quantities and handling frequency of the Industrial Materials (Sections X.A.3, X.F, X.G.1.a). Specifically, the SWPPP fails

- to identify and discuss in detail the hazardous materials stored and utilized at the Facility, other than to indicate that this information is located at the facility office;
- (d) The SWPPP fails to discuss in detail **ALL Facility operations and all industrial processes** at the facility, including manufacturing, cleaning, maintenance, recycling, disposal, and any other activities related to each industrial process; and the type, characteristics, and approximate quantity of industrial materials used in or resulting from the process. Areas protected by containment structures and the corresponding containment capacity are also required to be identified and described. (X.G.1.a). Specifically, the SWPPP fails to include the trucking operations at the Facility and does not specify the industrial activities of its “tenants”;
 - (e) The SWPPP fails to include an adequate description of **Potential Pollutant Sources** and narrative assessment of all areas of industrial activity with potential industrial pollutant sources, including Industrial Processes, Material Handling and Storage Areas, Dust and Particulate Generating Activities, Significant Spills and Leaks, Non-Storm Water Discharges and Erodible Surfaces (Section X.G). Specifically, the SWPPP does not include as potential pollutants the hazardous materials stored at the Facility, nor does it include the tenant stored materials;
 - (f) The **Advanced BMPs** as identified in the SWPPP are inadequate to comply with the Best Available Technology (“BAT”) and Best Conventional Pollutant Control Technology (“BCT”) requirements of the General Permit to reduce or prevent discharges of pollutants in the Facility’s storm water discharge in a manner that reflects best industry practice, considering technological availability and economic practicability and achievability, including Exposure Minimization BMPs, Storm Water Containment and Discharge Reduction BMPs or Treatment Control BMPs (Section X.H.2);
 - (g) The SWPPP fails to discuss in detail factors related to the **detention ponds**, including maximum capacity, whether they are designed to conform with the requirements of Section X.H.6 of the General Permit (Design Storm Standards for Treatment Control BMPs), or they are engineered and constructed to contain the maximum historic precipitation event;
 - (h) The SWPPP fails to identify all **Non-Storm Water Discharges (NSWDs)** sources and drainage areas, including an evaluation of all drains (inlets and outlets) that identifies connections to the storm water conveyance system, and a description of how all unauthorized NSWDs have been eliminated (Section X.G.e). Specifically, the SWPPP does not take into consideration the continual NSWDs at the facility associated with process water and truck washing;

- (i) The SWPPP fails to include an adequate discussion of the **Facility's receiving waters** (Section XI.B.6(e), Section X.G.2.ix);
- (j) The SWPPP does not contain the proper **sampling parameters** that include all potential pollutants present at the facility due to its industrial operations and industrial materials present at the facility (Section XI.B.6); and
- (k) The SWPPP fails to include an appropriate discussion of **drainage areas and Outfalls** from which samples must be taken during Qualified Storm Events (Section XI).

Failure to develop or implement an adequate SWPPP is a violation of Sections II.B.4.f and X of the General Permit.

B. Failure to Develop, Implement and/or Revise an Adequate Monitoring and Reporting Program Pursuant to the General Permit

Section XI of the General Permit requires Dischargers to develop and implement a storm water monitoring and reporting program ("M&RP") prior to conducting industrial activities. Dischargers have an ongoing obligation to revise the M&RP as necessary to ensure compliance with the General Permit.

The objective of the M&RP is to detect and measure the concentrations of pollutants in a facility's discharge, and to ensure compliance with the General Permit's Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations. An adequate M&RP ensures that BMPs are effectively reducing and/or eliminating pollutants at the Facility, and it must be evaluated and revised whenever appropriate to ensure compliance with the General Permit.

1. Failure to Conduct Visual Observations

Section XI(A) of the General Permit requires all Dischargers to conduct visual observations at least once each month, and sampling observations at the same time sampling occurs at a discharge location.

Observations must document the presence of any floating and suspended material, oil and grease, discolorations, turbidity, odor and the source of any pollutants. Dischargers must document and maintain records of observations, observation dates, locations observed, and responses taken to reduce or prevent pollutants in storm water discharges.

EDEN believes that between July 1, 2015, and the present, the Facility has failed to conduct monthly and sampling visual observations pursuant to Section XI(A) of the General Permit.

2. Failure to Collect and Analyze the Required Number of Storm Water Samples

In addition, EDEN alleges that F.T.G. Construction Materials has failed to provide the Regional Water Board with the minimum number of annual documented results of Facility run-off sampling as required under Sections XI.B.2 and XI.B.11.a of Order No. 2014-0057-DWQ, in violation of the General Permit and the CWA.

Section XI.B.2 of the General Permit requires that all Dischargers collect and analyze storm water samples from two Qualifying Storm Events (“QSEs”) within the first half of each reporting year (July 1 to December 31), and two (2) QSEs within the second half of each reporting year (January 1 to June 30).

Section XI.C.6.b provides that if samples are not collected pursuant to the General Permit, an explanation must be included in the Annual Report.

As of the date of this Notice, F.T.G. Construction Materials has failed to upload into the SMARTS database system *any* storm water sample analyses for samples collected during the reporting years 2015-16, 2016-17, 2017-18 and 2018-19 to date.

EDEN notes that F.T.G. Construction Materials’ SWPPP and Site Map confirm that the Facility has detention ponds it utilizes as an Advanced BMP at the site. However, the SWPPP does not indicate whether the Facility’s detention pond/storm water containment system is engineered and constructed to contain the maximum historic precipitation event, nor does the SWPPP provide specific engineering calculations with regard to the detention ponds’ capacity. This omission is a violation of Section X.H.6 of the General Permit.

There is no evidence that the Facility’s detention ponds result in zero storm water discharge at the Facility, such that the Facility is not required to collect and analyze storm water samples. In fact, EDEN’s investigation reveals that there are three storm water inlets at the perimeter of the facility from which F.T.G. Construction could easily collect storm water samples during any moderate period of rainfall.

Specifically, over 70% of the facility is paved in concrete. There are two sampling points located along the north and south sides of W. Anderson Street at municipal storm drain inlets, and sheet flow can be collected from these locations.

Further, to date, the Facility has not applied for certification under the General Permit’s “NONA” exclusion (Notice of Non-Applicability), pursuant to Section XX.C of the General Permit. To the extent that F.T.G. Construction Materials is claiming to have a “no discharge” facility, such that its Annual Reports indicate the Facility’s lack of sampling was attributable to no discharge occurring at the Facility, F.T.G. Construction Materials must obtain a “No Discharge Technical Report” pursuant to Section XX.C.3 of the General Permit.

C. Falsification of Annual Reports Submitted to the Regional Water Board

Section XXI.L of the General Permit provides as follows:

L. Certification

Any person signing, certifying, and submitting documents under Section XXI.K above shall make the following certification:

"I certify under penalty of law that this document and all Attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, to the best of my knowledge and belief, the information submitted is, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Further, Section XXI.N of the General Permit provides as follows:

N. Penalties for Falsification of Reports

Clean Water Act section 309(c)(4) provides that any person that knowingly makes any false material statement, representation, or certification in any record or other document submitted or required to be maintained under this General Permit, including reports of compliance or noncompliance shall upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment for not more than two years or by both.

On July 14, 2016, July 5, 2017, July 12, 2018, and July 9, 2019, F.T.G. Construction Materials submitted its Annual Reports for the Fiscal Years 2015-16, 2016-17, 2017-18, and 2018-19. Mr. Henry Rotor signed the Reports under penalty of law. Mr. Rotor is the current Legally Responsible Person ("LRP") for F.T.G. Construction Materials.

The Annual Reports included Attachment 1 as an explanation for why F.T.G. Construction Materials failed to sample the required number of Qualifying Storm Events during the reporting year for all discharge locations, in accordance with Section XI.B. Mr. Rotor certified in the Reports, under penalty of perjury, that the required number of samples were not collected by the Facility because allegedly there were insufficient qualifying storm water discharges during the reporting years and scheduled facility operating hours.

However, records from the National Oceanic and Atmospheric Administration (NOAA) website/database confirm that during the reporting years in question there were in fact sufficient Qualified Storm Events (QSEs) occurring near the Facility during or within 12 hours of the start of regular business hours to allow F.T.G. Construction Materials to collect the requisite number of samples.

D. Deficient BMP Implementation

Sections I.C, V.A and X.C.1.b of the General Permit require Dischargers to identify and implement minimum and advanced Best Management Practices (“BMPs”) that comply with the Best Available Technology (“BAT”) and Best Conventional Pollutant Control Technology (“BCT”) requirements of the General Permit to reduce or prevent discharges of pollutants in their storm water discharge in a manner that reflects best industry practice, considering technological availability and economic practicability and achievability.

EDEN alleges that F.T.G. Construction Materials has been conducting industrial activities at the site without adequate BMPs to prevent resulting non-storm water discharges. Non-storm water discharges resulting from these activities are not from sources that are listed among the authorized non-storm water discharges in the General Permit, and thus are always prohibited.

F.T.G. Construction Materials’ failure to develop and/or implement adequate BMPs and pollution controls to meet BAT and BCT at the Facility violates and will continue to violate the CWA and the Industrial General Permit each day the Facility discharges storm water without meeting BAT and BCT.

Specific BMP Deficiencies

On July 20, 2018, the Facility was inspected by Jorge Beltran and Michael Fischer of the Central Valley of the Regional Water Quality Control Board. During that inspection, the Regional Water Board inspectors noted the following BMP deficiencies:

1. Tracking from the Facility into W. Anderson and S. Stockton Streets;
2. Non-storm water discharges from hauling truck tire wash areas of facility;
3. Sediment control BMP in need of maintenance;
4. Hydraulic fluid waste in uncovered and unlabeled drum container;
5. Considerable leaks and spills around base of the motor used to lift and tip the hauling trucks;
6. Hydraulic fluid buckets and gas cans without secondary containment;
7. Large outdoor stockpiles of recycled asphalt and concrete without any BMPs;
8. Numerous spills of waste oil near concrete block storage area;
9. Drain inlets in need of maintenance;
10. Construction material overlapping the perimeter control at the Facility’s southern boundary; and

11. Hazardous waste material and hazardous waste containers stored without cover, unlabeled and without secondary containment near the gypsum unloading pad.

E. Discharges in Violation of the General Permit

Except as authorized by Special Conditions of the General Permit, Discharge Prohibition III(B) prohibits permittees from discharging materials other than storm water (non-storm water discharges) either directly or indirectly to waters of the United States. Unauthorized non-storm water discharges must be either eliminated or permitted by a separate NPDES permit.

Information available to EDEN indicates that unauthorized non-storm water discharges occur at the Facility due to inadequate BMP development and/or implementation necessary to prevent these discharges. Specifically, EDEN's investigation has revealed that the Facility's non-storm water discharges include process water from its concrete block operations, as well as from truck and tire washing activities.

EDEN alleges that the Discharger has discharged storm water containing excessive levels of pollutants from the Facility to its Receiving Waters during at least every significant local rain event over 0.1 inches in the last five (5) years.

EDEN hereby puts the Discharger on notice that each time the Facility discharges prohibited non-storm water in violation of Discharge Prohibition III.B of the General Permit is a separate and distinct violation of the General Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a).

F. Failure to Comply with Facility SWPPP

Section "Monitoring Implementation Plan" of the Facility SWPPP indicates that the Facility will collect and analyze storm water samples from two qualified storm events within the first half of each reporting year (July 1 to December 31) and two QSEs within the second half of each reporting year (January 1 to June 30).

As detailed above, the Facility missed collecting storm water samples in the reporting years 2015-16, 2016-17 and 2017-18, and 2018-19.

Furthermore, Section X.H.g of the General Permit requires all Dischargers to develop and implement management procedures to ensure that appropriate staff implements all elements of the Facility's SWPPP, including the Monitoring Implementation Plan.

G. Failure to Properly Train Employees/Facility Pollution Prevention Team

Section X.D.1 of the General Permit requires each Facility to establish a Pollution Prevention Team responsible for assisting with the implementation of the requirements of the

General Permit. The Facility is also required to identify alternate team members to implement the SWPPP and conduct required monitoring when the regularly assigned Pollution Prevention Team members are temporarily unavailable (due to vacation, illness, out of town business, or other absences).

Section X.H.f of the General Permit also requires that each Facility ensure that all Pollution Prevention Team members implementing the various compliance activities of the General Permit are properly trained in at least the following minimum requirements: BMP implementation, BMP effectiveness evaluations, visual observations, and monitoring activities. Further, if a Facility enters Level 1 status, appropriate team members must be trained by a QISP.

Based on the foregoing violations, it is clear that F.T.G. Construction Materials has either not properly established its Pollution Prevention Team, or has not adequately trained its Pollution Prevention Team, in violation of Sections X.D.1 and X.H.f of the General Permit.

F.T.G. Construction Materials may have had other violations that can only be fully identified and documented once discovery and investigation have been completed. Hence, to the extent possible, EDEN includes such violations in this Notice and reserves the right to amend this Notice, if necessary, to include such further violations in future legal proceedings.

IV. THE PERSON OR PERSONS RESPONSIBLE FOR THE VIOLATIONS

The entities responsible for the alleged violations are F.T.G. Construction Materials, as well as employees of the Facility responsible for compliance with the CWA.

V. THE DATE, DATES, OR REASONABLE RANGE OF DATES OF THE VIOLATIONS

The range of dates covered by this 60-day Notice is from at least September 1, 2014, to the date of this Notice. EDEN may from time to time update this Notice to include all violations which may occur after the range of dates covered by this Notice. Some of the violations are continuous in nature; therefore, each day constitutes a violation.

VI. CONTACT INFORMATION

The entity giving this 60-day Notice is Eden Environmental Citizen's Group ("EDEN").

Aiden Sanchez
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EDEN has retained counsel in this matter as follows:

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To ensure proper response to this Notice, all communications should be addressed to EDEN's legal counsel, Mr. Xhavin Sinha.

VII. RELIEF SOUGHT FOR VIOLATIONS OF THE CLEAN WATER ACT

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any "person," including individuals, corporations, or partnerships, for violations of NPDES permit requirements and for un-permitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), §1362(5).

Pursuant to Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4, each separate violation of the Clean Water Act subjects the violator to a penalty for all violations occurring during the period commencing five (5) years prior to the date of the Notice Letter. **These provisions of law authorize civil penalties of \$37,500.00 per day per violation for all Clean Water Act violations after January 12, 2009, and \$51,570.00 per day per violation for violations that occurred after November 2, 2015.**

In addition to civil penalties, EDEN will seek injunctive relief preventing further violations of the Clean Water Act pursuant to Sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), declaratory relief, and such other relief as permitted by law.

Lastly, pursuant to Section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d) and California Code of Civil Procedure §1021.5, EDEN will seek to recover its pre and post-litigation costs, including all attorneys' and experts' fees and costs incurred (see *Southern California Alliance of Publicly Owned Treatment Works v. U.S. Environmental Protection Agency* (9th Cir. 2017) 853 F.3d 1076; *Vasquez v. State of California* (2008) 45 Cal.4th 243).

VIII. CONCLUSION

The CWA specifically provides a 60-day notice period to promote resolution of disputes. EDEN encourages F.T.G. Construction Materials' counsel to contact **EDEN's counsel** within 20 days of receipt of this Notice to initiate a discussion regarding the violations detailed herein. Please do not contact EDEN directly.

During the 60-day notice period, EDEN is willing to discuss effective remedies for the violations; however, if F.T.G. Construction Materials wishes to pursue such discussions in the absence of litigation, it is suggested those discussions be initiated soon so that they may be completed before the end of the 60-day notice period. EDEN reserves the right to file a lawsuit if discussions are continuing when the notice period ends.

Very truly yours,



AIDEN SANCHEZ
Eden Environmental Citizen's Group

Copies to:

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Administrator, U.S. Environmental Protection
Agency

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